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EMPTY POCKETS: APPLICATION OF THE FIREMAN'S RULE TO EMERGENCY MEDICAL TECHNICIANS¹

Traumatic injuries—multiple fractures, crushed limbs, head injuries, blunt or penetrating traumas, tissue burns, cardiopulmonary arrest—kill an estimated 140,000 people each year. The annual cost of medical care services and lost productivity, resulting from such injuries, exceeds \$155 billion.² In the last fifteen years, a worthy adversary of trauma has arisen; Emergency Medical Services (EMS) substantially reduces the incidence of trauma death³ through an organized system of pre-hospital and hospital trauma

1. Emergency medical technicians (EMT's) are an essential link in the Emergency Medical Services (EMS) chain. EMT's are trained to provide basic life support to trauma victims, stabilizing and transporting them to appropriate facilities as swiftly and safely as possible. For a statutory definition of both EMT's and another class of EMS personnel, paramedics, see *infra* note 107.

2. Trauma Advisory Committee Issues Report and Recommendations, Bus. Wire, Jan. 4, 1990 (NEXIS, Bwire file). A complete trauma care system with full staff, modern equipment and effective distribution of both trauma centers and ambulance units would reduce both the number of deaths by 20% to 50%, and costs, correspondingly. See *id.*; see also Dodson, *Doctors Decry 'Neglected Epidemic' of Trauma Deaths*, L.A. Times, May 31, 1985, § 2, at 1, col. 4 (Orange County ed.).

3. McAuliffe, *Medical Advances and Political Problems: Rx for Trauma Care*, U.S. NEWS & WORLD REP., June 16, 1986, at 53. Pre-hospital emergency care provided by EMT's is a dynamic, emerging field whose newness belies its tremendous impact on the survival chances of the sick and injured. See *supra* note 2. Although there are currently over 500,000 individuals classified as EMT's in EMS systems nationwide, Telephone interview with John Carey, Executive Director of the National Association of Emergency Medical Technicians (Oct. 13, 1989) [hereinafter Carey], the field of pre-hospital medical care is, in its present form, new to the United States. See Curry, *Why Good Samaritan Laws Don't Work*, 10 J. EMERGENCY MED. SERVICES 26, 26 (1985).

As late as the mid-1960's, pre-hospital emergency medical care was characterized by the "[w]e haul and that's all" philosophy of EMS." *Id.* Ambulance services operated by funeral homes would load patients into the back of long, low ambulances built for speed, transport them virtually unattended, and deposit them at the hospital or the morgue depending upon the patient's condition on arrival. Telephone interview with James O. Page, Publisher of the *Journal of Emergency Medical Services* (Oct. 1989); see also J. PAGE, *THE PARAMEDICS* 3 (1979); Curry, *supra*, at 26. The current concept of Emergency Medical Services originated in the mid-1960's, when the National Academy of Sciences National Research Council issued the following statement intending to establish standards for pre-hospital care:

Ambulance personnel are responsible for all lay emergency care from the time they first see the victim through the transportation and delivery to care of a physician. They therefore must be able not only to appraise the extent of first aid rendered by others, but also to carry out what additional measures will make it safe to move the victim and minimize morbidity and mortality.

care, designed either to stabilize or to operate on a patient within the sixty-minute "golden hour" following the trauma.⁴ When EMS reaches victims within the golden hour, the emergency survival rate of these patients jumps from twenty-five to eighty-five percent.⁵

Large cuts in government funding⁶ and, to a somewhat lesser extent, increasing amounts of medical malpractice litigation⁷ have critically hampered the wholesale development of EMS systems in recent years.⁸ Now, another

H. GRANT, R. MURRAY, JR. & J. BERGERON, *EMERGENCY CARE* 3 (1986) [hereinafter GRANT]. Additional impetus for the current EMS system is found in the National Highway Safety Act of 1966 which "charged the United States Department of Transportation . . . with developing Emergency Medical Services (EMS) standards and assisting the states to upgrade the quality of their pre-hospital emergency care." *Id.* Between 1969-1976, 25 states initiated advanced, pre-hospital, nonphysician services, J. PAGE, *supra*, at 18, and 29 states statutorily defined EMS personnel classifications. *Id.* at vii. The widespread proliferation of EMS systems, throughout not only large cities but also other urban areas, has only been observable within the last 10 to 15 years. Glastris, *An American Hero: Dr. David Boyd and Emergency Health Care*, 18 WASH. MONTHLY 19, 24 (1986).

4. Levy, *Hahnemann's Helicopter Hops Raise Chances of Patient Survival to 85%*, FOCUS, June 29, 1988, at 56; see also Glastris, *supra* note 3, at 19. Most trauma deaths are caused by hemorrhagic shock. Severe hemorrhaging "triggers wild oscillations in the body's biochemistry," potentially causing multi-system organ failure. *Id.* at 21. Immediate stabilization and rapid transport significantly reduce the chance of a patient going into shock. *Id.*

5. McAuliffe, *supra* note 3, at 53.

6. See Grossman, *Emergency! Emergency: Trauma Care*, HEALTH, July, 1989, at 76 ("Despite its huge impact, injury is not on the public-health agenda of the United States . . . [and] receives scant public funding."); see also EMT, Volunteer Firefighter Crisis Predicted, U.P.I., Aug. 10, 1989 (NEXIS, Wires file) ("[F]irefighting and medical services . . . are also facing financial difficulties because the federal Occupational Safety and Health Administration demands they constantly update equipment."). In 1981, substantial cuts were made in federal EMS allocations, exacerbating pre-existing systemic difficulties. Glastris, *supra* note 3, at 27 (funding over a two-year period dropped 34%).

7. Curry, *supra* note 3, at 26. Because, however, the service provided by EMS personnel benefits whole communities, virtually all states have now enacted some immunity-from-suit provision, commonly known as a "good samaritan" statute, which acts as a defense for EMS personnel in malpractice litigation. *Id.*; see, e.g., IDAHO CODE § 39-135 (1985) ("No act or omission of any [ambulance paramedic] . . . done or omitted in good faith while rendering emergency care services . . . shall impose any liability upon [the ambulance paramedic] . . ."). While large numbers of medical malpractice suits continue to concern EMS personnel, this Comment focuses on suits filed by EMS personnel against negligent actors and not malpractice suits filed by patients against EMS personnel.

8. "American ambulance service is in such a state of emergency that some cities should set red lights flashing and sirens wailing. . . . [The condition of EMS] 'for certainly more than half the United States . . . ranges from deep trouble to critical but stable . . .'" Dvorchak, *Ambulance Service Across the U.S. is in Critical Condition, Experts Say*, L.A. Times, May 1, 1988, § 1, at 4, col. 1 (quoting Jack Stout, Miami consultant/designer of ambulance systems). Yet, EMS services are absolutely critical to the preservation of lives that would, without such services, be lost on account of injury. At least 73% of all deaths from motor vehicle accidents in which the death does not result from brain injury can be prevented by prompt emergency medical attention. Grossman, *supra* note 6, at 76. "Clearly, the lack of a system is killing people." *Id.*

legal problem threatens to inhibit EMS development: barring tort recovery by EMS members for injuries they suffer risking their lives in the rescue. Recently, two state courts have considered extending the common law fireman's rule to EMS personnel. In jurisdictions where this extension might be accepted, the rule, which in its most limited form prohibits a *fireman* from recovering for injuries caused by the very negligence necessitating his presence, would deny recovery by EMS personnel for many of the injuries suffered in the course of their employment.⁹ Should the rule be applied to EMS personnel, many of those who have been negligently injured in the performance of their duties will lose the right to recover from the negligent actors causing their injuries.¹⁰

In *Kowalski v. Gratopp*,¹¹ Michigan became the first state to consider extending the fireman's rule to EMS personnel. In that case, the plaintiff, a paramedic, slipped on an icy walkway at the scene of a call and filed suit alleging negligent maintenance of the premises.¹² The Michigan Court of Appeals decided against extension of the rule and, consequently, held that the fireman's rule did not bar recovery of damages by the paramedic.¹³ In obiter dictum, the court further stated that the fireman's rule should not be applied to any subcategory of EMS professionals.¹⁴

In contrast, the New Jersey Superior Court, in *Siligato v. Hiles*,¹⁵ included EMS personnel in the category of public officials to whom the rule applies and barred recovery by emergency medical technician Stephen Siligato.¹⁶ Siligato had sued his baby sitter for negligent infliction of emotional distress after being forced to witness the death of his infant son in the course of an emergency call.¹⁷

Neither the Michigan Court of Appeals nor the New Jersey Superior Court carefully examined the common law and policy considerations underlying the fireman's rule, and neither court studied the differences between firemen and EMS personnel in their respective roles and training. Given the budgetary problems currently facing EMS, the increasing amounts of malpractice litigation, and the loss of volunteer emergency medical technicians

9. For a recitation of the common law fireman's rule see *Lipson v. Superior Court*, 31 Cal. 3d 362, 366, 644 P.2d 822, 825, 182 Cal. Rptr. 629, 632 (1982).

10. But see *Kowalski v. Gratopp*, 177 Mich. App. 448, 451, 442 N.W.2d 682, 683 (1989) (fireman's rule not applied and recovery therefore permissible by paramedic).

11. 177 Mich. App. 448, 442 N.W.2d 682 (1989).

12. *Id.* at 449, 442 N.W.2d at 683.

13. *Id.*

14. *Id.* at 451, 442 N.W.2d at 683.

15. 236 N.J. Super. 64, 563 A.2d 1172 (Law Div. 1989).

16. *Id.* at 67, 563 A.2d at 1173.

17. *Id.*

(EMT's),¹⁸ who comprise an essential link in the trauma care chain, no course affecting EMS should be adopted without careful deliberation on the application of prior law to the unique characteristics of rapidly evolving EMS systems.

This Comment explores the multiple rationales for the fireman's rule. It then advances and analyzes the issues which should be considered before extending the fireman's rule to EMS personnel.¹⁹ Specifically, this Comment considers: Whether the common law rescue doctrine supersedes the fireman's rule; whether EMT's must be hired specifically to confront hazardous situations before the fireman's rule will be extended to them; whether volunteer EMS personnel fall within the fireman's rule; whether the duty of all potentially negligent members of the public to EMS personnel is excused when EMS personnel agree, between themselves and their employer, to assume the risks incident to their employment; whether traditional premises liability categorizations support an extension of the fireman's rule to EMS personnel; and whether public policy reasons for the fireman's rule support such an extension. This Comment then examines the limited decisions of the two state courts which have considered the duty owed EMT's and their paramedic counterparts.²⁰ Finally, this Comment concludes that while the fireman's rule should be extended to EMS personnel because public policy rationales apply equally to both firemen and EMS personnel, legislative reform of EMS benefit statutes (such as workmen's compensation statutes) is necessary to reflect and preserve the evolving role of EMS in contemporary society.

I. THE ORIGINS AND RATIONALE OF THE FIREMAN'S RULE

The fireman's rule prohibits a fireman from recovering damages for injuries caused by the very negligence that created the risk necessitating his presence.²¹ Almost all jurisdictions have adopted some form of the fireman's rule.²² The rule also applies to policemen,²³ and thus, is frequently referred

18. See Grossman, *supra* note 6, at 76.

19. The purpose of this Comment is not to argue for or against the existence of a fireman's rule per se, but to examine whether the reasons advanced to justify the fireman's rule may similarly be used to justify extension of the rule to EMS personnel.

20. Statutes distinguish the paramedic class of EMS personnel from the EMT class by the additional training of the former and the relative sophistication of the life support procedures that paramedics can perform. See, e.g., *infra* note 107.

21. *Lipson v. Superior Court*, 31 Cal. 3d 362, 366, 644 P.2d 822, 825, 182 Cal. Rptr. 629, 632 (1982).

22. *Calvert v. Garvey Elevators, Inc.*, 236 Kan. 570, 572, 694 P.2d 433, 436 (1985). Only Texas, Pennsylvania, Washington, Colorado, Massachusetts, New Hampshire, Rhode Island, and New York have chosen not to adopt some form of a fireman's rule. Note, *Oregon Abol-*

to as the professional rescuer's rule.²⁴ The treatment of the rule, not as a fireman's rule, but as a professional rescuer's rule, when coupled with the historical association of EMS with fire departments,²⁵ virtually assures that defendants will attempt to bring EMS personnel within the scope of the fireman's rule. This Comment is intended to review and resolve the issues which this wave of first-impression litigation will present in jurisdictions across the country.

In its earliest formulation, the fireman's rule was based upon traditional premises liability; firemen were classified as either licensees or invitees.²⁶ Because this rigid classification of firemen has proven awkward and unsatisfactory,²⁷ most courts have shifted the derivation of the rule either to

ishes the Fireman's Rule—*Christiansen v. Murphy*, 19 SUFFOLK U.L. REV. 957, 966-67 nn.58-59 (1985).

23. *Flowers v. Sting Sec., Inc.*, 62 Md. App. 116, 123 n.1, 488 A.2d 523, 527 n.1, *aff'd*, 308 Md. 432, 520 A.2d 361 (1987).

24. See, e.g., *Bonney v. Canadian Nat'l R.R.*, 613 F. Supp. 997, 1008 (D. Me. 1985), *rev'd*, 800 F.2d 274 (1st Cir. 1986); *Chinigo v. Geismar Marine, Inc.*, 512 So. 2d 487, 491 (La. Ct. App.), *cert. denied*, 514 So. 2d 457 (La. 1987); *Maltman v. Sauer*, 84 Wash. 2d 975, 978, 530 P.2d 254, 257 (1975); W. PROSSER & W. KEATON, *THE LAW OF TORTS* § 61 (5th ed. 1984) [hereinafter PROSSER]. The court in *Von Beltz v. Stuntman, Inc.*, included firemen, policemen, and other professionals in its statement of persons covered by the fireman's rule. 207 Cal. App. 3d 1467, 1478, 255 Cal. Rptr. 755, 761 (1989).

25. Even today, between 70%-80% of all EMS personnel are also part of a fire service. Carey, *supra* note 3.

26. See, e.g., *Gibson v. Leonard*, 143 Ill. 182, 190, 32 N.E. 182, 184 (1892); *Meiers v. Fred Koch Brewery*, 229 N.Y. 10, 15-16, 127 N.E. 491, 492-93 (1920).

27. Note, *Assumption of the Risk and the Fireman's Rule*, 7 WM. MITCHELL L. REV. 749, 752 (1982) [hereinafter Note, *Assumption of the Risk*]. Firemen have never fit cleanly into either the licensee or the invitee category. *Id.* "A licensee is a person who is privileged to enter or remain on land only by virtue of the possessor's consent." RESTATEMENT (SECOND) OF TORTS § 330 (1965) [hereinafter RESTATEMENT]. An invitee is defined as either a public invitee or a business visitor. "A public invitee is a person who is invited to enter or remain on land as a member of the public for a purpose for which the land is held open to the public." *Id.* at § 332(2). "A business visitor is a person who is invited to enter or remain on land for a purpose directly or indirectly connected with business dealings with the possessor of the land." *Id.* at § 332(3).

To a licensee, the landowner merely owes a duty to warn of any concealed, dangerous conditions that are known to the landowner but not reasonably discoverable to the licensee. *Frankel v. Kurtz*, 239 F. Supp. 713, 717 (W.D.S.C. 1965); PROSSER, *supra* note 24, at § 60; see also RESTATEMENT, *supra*, at § 342. But to the invitee, an owner has an affirmative duty to make a reasonable inspection of the premises and to maintain the premises in a reasonably safe condition when he realizes that the premises present an unreasonable risk of harm and expects that an invitee will not discover this danger for himself. *Id.* at § 343; *Anderson v. Winn-Dixie Greenville, Inc.*, 257 S.C. 75, 77, 184 S.E.2d 77, 77 (1971); see also PROSSER, *supra* note 24, at § 61.

The law concerning proper classification of firefighters is hopelessly conflicting. Compare *Price v. Morgan*, 436 So. 2d 1116, 1120-21 (Fla. Dist. Ct. App. 1983) (holding firemen licensees) and *Buchanan v. Prickett & Son, Inc.*, 203 Neb. 684, 688, 279 N.W.2d 855, 858 (1979) (holding firemen bare licensees) with *Fancil v. Q.S.E. Foods, Inc.*, 60 Ill. 2d 552, 556, 328

assumption of the risk or have supplied public policy justifications for its adoption.²⁸

Where the fireman's rule is grounded in primary assumption of the risk,²⁹

N.E.2d 538, 541 (1975) (holding firemen licensees at some times and invitees at others) and *Walsh v. Madison Park Properties, Ltd.*, 102 N.J. Super. 134, 139, 245 A.2d 512, 515 (1968) (categorization of firemen depends not on title but on type of work done by firemen on premises). The confusing treatment of firemen under traditional premises liability analysis exists largely because firemen require neither the consent nor invitation of the landowner to enter upon the land. See *RESTATEMENT, supra*, at § 345 comment c; 1 F. HARPER, F. JAMES & O. GRAY, *THE LAW OF TORTS* § 1.16 (2d ed. 1956) [hereinafter HARPER]; see, e.g., *Brady v. Consolidated Rail Corp.*, 350 Ohio St. 3d 161, 163, 519 N.E.2d 387, 388 (1988). Nonetheless, firemen are generally owed the same duty that is owed a licensee. While it is "foolish to say that a fireman who comes to extinguish a blaze . . . confers no pecuniary benefit upon the occupier[, such a benefit tending to classify a fireman as an invitee], firemen and policemen, like licensees, are likely to enter at unforeseeable times, upon unusual parts of the premises." *PROSSER, supra* note 24, at § 61. In such circumstances, a landowner or occupier may not reasonably be expected to prepare his premises. *Id.*; see also *Shypulsky v. Waldorf Paper Prod. Co.*, 232 Minn. 394, 397, 45 N.W.2d 549, 551 (1951). For a thorough examination of the duty owed to policemen and firemen under a traditional premises liability analysis, see generally Note, *Assumption of the Risk, supra*.

28. Note, *Assumption of the Risk, supra* note 27, at 746, 747; see, e.g., *Lipson v. Superior Court*, 31 Cal. 3d 362, 370, 644 P.2d 822, 827, 182 Cal. Rptr. 629, 634 (1982); *Pottebaum v. Hinds*, 347 N.W.2d 642, 645 (Iowa 1984); *Armstrong v. Mailand*, 284 N.W.2d 343, 349-50 (Minn. 1979); *Mignone v. Fieldcrest Mills*, 556 A.2d 35, 38 (R.I. 1989).

The classification of firemen as invitees or licensees is a strained and artificial one, and, by definition, addresses only the duty owed a firemen on property owned or occupied by another. See *supra* note 27. Bases in assumption of risk and public policy are therefore necessary when courts extend the rule, as they have in many jurisdictions, to preclude recovery for a fireman's injuries occurring on premises other than those of the negligent landowner or occupier. See, e.g., *Whitten v. Miami-Dade Water & Sewer Auth.*, 357 So. 2d 430, 432 (Fla. Dist. Ct. App.), *cert. denied*, 364 So. 2d 894 (Fla. 1978); *Calvert v. Garvey Elevators, Inc.*, 236 Kan. 570, 572-76, 694 P.2d 433, 436-38 (1985); *Flowers v. Sting Sec., Inc.*, 62 Md. App. 116, 133-34, 488 A.2d 523, 532, *aff'd*, 308 Md. 432, 520 A.2d 361 (1987).

29. The term assumption of risk in its primary sense refers to risks that are incidental to a relationship of free association between plaintiff and defendant In such a case defendant's duty toward plaintiff is [traditionally thought to be] limited [The duty] does not extend to the use of care to make the conditions of the relationship reasonably safe—at most the duty is one of care to make these conditions as safe as they appear to be

HARPER, *supra* note 27, at 1163.

[P]rimary assumption of the risk technically is not a defense, but rather a legal theory which relieves a defendant of a duty which he might otherwise owe to the plaintiff Secondary assumption of the risk occurs when the plaintiff voluntarily encounters a known, appreciated risk [imposed by another's negligence] without an attendant manifestation by the plaintiff that he consents to relieve the defendant of his duty.

Armstrong v. Mailand, 284 N.W.2d 343, 351 (Minn. 1979) (emphasis in original) (citation omitted); see also *Baker v. Superior Court*, 129 Cal. App. 3d 710, 719, 181 Cal. Rptr. 311, 317 (1982).

The advent of comparative negligence statutes in many jurisdictions across the country should not destroy the doctrine of primary assumption of risk. *Ford v. Gouin*, 217 Cal. App.

it is said to be based "on a principle as fundamental to our law today as it was centuries ago. The principle is not unique to landowner cases but is applicable to our entire system of justice—one who has knowingly and voluntarily confronted a hazard cannot recover for injuries sustained thereby."³⁰ In accepting salary and fringe benefits, firemen and policemen are said to assume, as a matter of law, all normal risks inherent to employment and may not recover from one who negligently creates such a risk.³¹

Where states have adopted the fireman's rule for reasons of public policy,³² several justifications have been advanced to support the doctrine. First, the rule may acknowledge that it is offensive for a firefighter, paid and trained at the public's expense to confront crises often created by negligent citizens, to recover for the negligence that creates the very need for his employment.³³ Further, the rule may reflect the inconsistency and unfairness of exposing a citizen to the risk of tort liability when the citizen has neither the right to exclude nor control public safety officers in an emergency situation.³⁴ The fireman's rule also recognizes that the taxpayer, who pays the fire and police departments to confront risks that may be occasioned by his own future acts of negligence, does not expect to pay again when the public servant is injured while exposed to those risks.³⁵ Finally, public policy may justify the fireman's rule on the grounds that, despite the widespread existence of liability insurance, a legislature may more effectively and fairly spread the risk of injury to a professional rescuer by passing the cost onto the public through government entities that employ firefighters and police officers.³⁶

3d 1606, 1627, 266 Cal. Rptr. 870, 878 (1990); *Kreski v. Modern Wholesale Elec. Supply Co.*, 429 Mich. 347, 363, 415 N.W.2d 178, 185 (1987); *Armstrong*, 284 N.W.2d at 351. While secondary assumption of risk is a form of contributory negligence and, therefore, is no longer a viable defense in comparative negligence jurisdictions, see *Ford*, 217 Cal. App. 3d at 1609, 266 Cal. Rptr. at 871, primary assumption of risk releases the defendant's duty such that he will not be found negligent and will, consequently, require no defense whatsoever. *Armstrong*, 284 N.W.2d at 351.

30. *Armstrong*, 284 N.W.2d at 349-50 (quoting *Walters v. Sloan*, 20 Cal. 3d 199, 203, 571 P.2d 609, 611, 142 Cal. Rptr. 152, 154 (1977)).

31. *Steelman v. Lind*, 97 Nev. 425, 427, 634 P.2d 666, 667 (1981).

32. See, e.g., *Pottebaum v. Hinds*, 347 N.W.2d 642, 642 (Iowa 1984); *Mignone v. Fieldcrest*, 556 A.2d 35, 39 (R.I. 1989).

33. *Mignone*, 556 A.2d at 39.

34. *Pottebaum*, 347 N.W.2d at 645.

35. *Cella v. Interstate Properties*, 232 N.J. Super. 232, 237, 556 A.2d 1262, 1264 (App. Div. 1989) (quoting *Berko v. Freda*, 93 N.J. 81, 459 A.2d 663 (1983)).

36. *Pottebaum*, 347 N.W.2d at 645-46.

II. A BLUEPRINT FOR THE CASE OF FIRST IMPRESSION

Several courts have stated that the above bases for the fireman's rule form "a cluster of loosely related reasons, no one of which is necessarily sufficient to explain the rule [applied to firemen] in all of its manifestations."³⁷ Thus, courts have argued that the premises liability theory should not be separated from the assumption of the risk theory; nor, the assumption of the risk theory, from the public policy rationales.³⁸ It has been suggested that when examining the bases for the rule, a court need not scrutinize the limitations of the individual legal theories.³⁹ This Comment, however, contemplates extension of the fireman's rule to EMT's. Since there is no developed history of such an extension, each legal basis for the rule must be tested anew with an eye to the differences in function, training, and level of compensation between firemen (and policemen) and EMS personnel.

A. Extension in Jurisdictions Grounding the Fireman's Rule in Primary Assumption of the Risk

1. Rescuing the Fireman's Rule from the Rescue Doctrine

In jurisdictions seeking to extend a fireman's rule based upon primary assumption of the risk, the potentially conflicting application of the common law rescue doctrine must be considered.⁴⁰ This doctrine finds one expression in the words of Justice Cardozo who said, "Danger invites rescue. The cry of distress is the summons to relief."⁴¹ Because this relief is a foreseeable consequence of any situation necessitating rescue, the "wrong [(breach of duty)] to the imperilled victim . . . is a wrong also to his rescuer."⁴² *Eckert*

37. *Flowers v. Sting Sec., Inc.*, 62 Md. App. 116, 123-24, 448 A.2d 523, 527 (fireman's rule barred recovery to a volunteer fireman who, in the course of fighting a fire, fell twelve stories down an open elevator shaft), *aff'd*, 308 Md. 432, 520 A.2d 361 (1987).

38. *Walters v. Sloan*, 20 Cal. 3d 199, 205, 571 P.2d 609, 612, 142 Cal. Rptr. 152, 155 (1977).

39. *Id.*

40. See *Walker Hauling Co., Inc. v. Johnson*, 110 Ga. App. 620, 624, 139 S.E.2d 496, 499 (1964); *Buchanan v. Prickett & Son, Inc.*, 203 Neb. 684, 688, 279 N.W.2d 855, 858 (1979); *Maltman v. Sauer*, 84 Wash. 2d 975, 978, 530 P.2d 254, 257 (1975). The rescue doctrine has been stated as follows:

Where a defendant's negligent act . . . has created a condition or situation which involves urgent and imminent peril and danger, to life or property, of himself or of others, those acts of negligence are also negligence in relationship to all others who, in the exercise of ordinary care for their own safety under the circumstances, short of rashness and recklessness, may attempt . . . to rescue such endangered life or property

Walker Hauling, 110 Ga. App. at 624, 139 S.E.2d at 499.

41. *Wagner v. International Ry. Co.*, 232 N.Y. 176, 180, 133 N.E. 437, 437 (1921).

42. *Id.*

v. *Long Island R.R.*,⁴³ long considered the leading case on the rescue doctrine,⁴⁴ formulated the rescue doctrine somewhat differently:

Under the circumstances in which the deceased was placed, it was not wrongful in him to make every effort in his power to rescue the child It was his duty to exercise his judgment as to whether he could probably save the child without serious injury to himself. If from the appearances he believed that he could, it was not negligence to make an attempt so to do, although believing that possibly he might fail and receive an injury himself.⁴⁵

In order to understand a court's efforts to apply a fireman's rule based on primary assumption of the risk, where plaintiff rescuer is a member of EMS, it is critical to distinguish between the above expressions of the rescue doctrine. Under Justice Cardozo's statement of the rule, the tortfeasor has an affirmative duty to the rescuer; under the *Eckert* court's statement of the rule, protection to the rescuer should occur because, whether a duty to the rescuer exists, the tortfeasor is unable to argue contributory negligence on the part of the rescuer. Where a member of EMS is injured in the performance of his duties, a court following the Cardozo rule would not permit a fireman's rule based on primary assumption of the risk to bar recovery by the EMS member; "the doctrine of rescue necessarily contemplates an assumption of the risk inherent in the peril . . . and [yet] allows recovery for injuries thereby incurred, for the reason that the defendants were charged with the foreseeability of their negligence's [sic] attracting rescuers to assume the risks."⁴⁶

A court following the *Eckert* rule, however, would permit the application of a fireman's rule based on primary assumption of the risk. Although, under the *Eckert* statement of the rescue doctrine, the tortfeasor would not be permitted to argue contributory negligence, the *Eckert* formulation does not create the superseding duty towards the rescuer found in the Cardozo rule; the fireman's rule would still negate any duty owed by the tortfeasor to protect the rescuer from harm foreseeably within the scope of his employment.⁴⁷ Thus, the court would never reach the question of whether a con-

43. 43 N.Y. 502 (1870).

44. See *Henshaw v. Belyea*, 220 Cal. 458, 459, 31 P.2d 348, 349 (1934) (rescue doctrine grew out of cases like *Eckert*, "said to be the leading case allowing a recovery by the rescuer").

45. *Eckert*, 43 N.Y. at 505-06.

46. *Walker Hauling Co., Inc. v. Johnson*, 110 Ga. App. 620, 625, 139 S.E.2d 496, 500 (1964).

47. The rescue doctrine, as stated in *Buchanan v. Prickett & Son, Inc.*, 203 Neb. 684, 684, 279 N.W.2d 855, 855 (1979) and *Maltman v. Sauer*, 84 Wash. 2d 975, 977, 530 P.2d 254, 256 (1975), contemplates a response to imminent "peril, or reasonable appearance of peril, to the life or limb of another . . . in the sense that an emergency exists requiring immediate action." *Maltman*, 84 Wash. 2d at 977, 530 P.2d at 256. Thus, even if the rescue doctrine were to

tributory negligence defense existed.⁴⁸

The preferred position is that the rescue doctrine does not create a duty to the rescuer but merely serves to prohibit the affirmative defense of contributory negligence. This preference may be proven deductively: the Cardozo formulation of the rescue doctrine creates a duty to the rescuer which survives the fireman's rule; volunteer firemen, as professional rescuers who might otherwise receive the benefits of this duty and recover under the rescue doctrine (covering voluntary acts) are almost always held subject to the fireman's rule and barred from recovery when this rule is based upon the notion of assumption of the risk;⁴⁹ therefore, not the Cardozo but the *Eckert* formulation of the rescue doctrine must be the prevalent one. Where the preferred formulation is employed in jurisdictions grounding the fireman's rule in primary assumption of the risk, the rescue doctrine will not prevent extension of the fireman's rule to EMS personnel.

2. Does Extension Require a Duty to Confront?

Even if the rescue doctrine will not prevent extension of the fireman's rule

preempt the fireman's rule in situations involving EMS personnel, application of the rescue doctrine would be limited to situations requiring emergency medical care and would not cover EMS response to the host of calls requiring non-emergency medical care, where an EMT might be injured.

48. See, e.g., *Maltman*, 84 Wash. 2d at 978-79, 530 P.2d at 257. The court in *Maltman* stated that, to apply the rescue doctrine, "[t]here must [first] be negligence on the part of the defendant which is the proximate cause of [the] peril." *Id.* at 977, 530 P.2d at 256. But "[i]n the case of a professional rescuer[,] certain hazards are assumed When the injury is the result of a hazard generally recognized as being within the scope of dangers identified with the particular rescue operation, the doctrine will be unavailable to that plaintiff." *Id.* at 978-79, 530 P.2d at 257; see also *Buchanan*, 203 Neb. at 688, 279 N.W.2d at 859.

49. See PROSSER, *supra* note 24, at § 461 n.43. Not surprisingly, the rescue doctrine has been almost universally limited to instances in which "the rescuer acts from motives of altruism." *Carter v. Taylor Diving & Salvage Co.*, 341 F. Supp. 628, 630 (E.D. La. 1972), *aff'd*, 470 F.2d 995 (5th Cir. 1973). Permitting paid public rescuers to be paid again, through the liability of the tortfeasor for injuries sustained in the line of duty, has often been said to offend public policy. See *supra* notes 33-35 and accompanying text. The court in *Walker Hauling Co., Inc. v. Johnson*, 100 Ga. App. 620, 139 S.E.2d 496 (1964), however, arguing for the application of the rescue doctrine to *volunteer* firemen, commented that to exclude trained, volunteer rescuers would be to "reduce the ranks of rescuers . . . to the less competent." *Id.* at 624, 139 S.E.2d at 499. This, said the court, would "contradict and weaken the application and consequences of one of the most advanced doctrines evolved by the conscience of mankind." *Id.*

Walker Hauling is the leading minority case advocating the Cardozo statement of the rescue doctrine. *Maltman v. Sauer*, however, is the first case to integrate the rescue doctrine with the somewhat antithetical fireman's rule. 84 Wash. 2d 975, 978, 530 P.2d 254, 257 (1975) ("We believe that a professional rescuer, in making a deliberate attempt at saving a life, and under the correct factual setting [(facing hazards not foreseeably identified with the particular rescue operation)], is within the intended scope of the 'rescue doctrine.'").

to EMS personnel, in jurisdictions grounding the adoption of the fireman's rule in primary assumption of the risk, courts must address a second issue in order to determine how widely the doctrine might be applied to EMS personnel. Courts have been willing to apply the fireman's rule to both policemen and firemen because they are public employees who are hired, trained, and paid to confront danger.⁵⁰ EMS personnel, on the other hand, are paid to provide emergency medical services and face danger only incidentally. EMS personnel are not specifically paid to combat dangerous situations for the protection of society and should perhaps be treated differently under the primary assumption of risk analysis.

Under the assumption of risk analysis, persons fall within the scope of the fireman's rule because they confront known peril with full realization of the risks.⁵¹ Two lines of cases imply differing interpretations of the framework within which EMT's will be said to *confront* known peril. The first holds that the known, "ordinary risks which a fireman encounters in the performance of his duty . . . he has assumed a *duty* to perform."⁵² The contrasting line of cases indicates that firemen cannot complain of the negligence causing a fire where their "occupation by its very nature exposes them to particular risks of harm."⁵³ Where firemen are concerned, the two statements of the risk assumption are largely equivalent; where EMT's are concerned, however, the difference between the statements is vast. Under the first formulation, the fireman's rule would bar recovery by an EMT injured by a particular hazard only where the EMT had a duty to confront that danger. Thus, the rule would only bar recovery by an EMT who suffered from smoke inhalation if he had a duty to expose himself to smoke in order to render emergency care. By the second formulation, an EMT would find his recovery barred where the hazard was one to which a reasonable EMT could expect exposure in the course of his employment. Because a reasonable EMT could expect to encounter smoke, for example, at the scene of any large building fire, under the second formulation, the fireman's rule would almost certainly bar recovery for smoke inhalation.

The difference between the first and second formulations of the "confronting known perils" rationale is crucial to the determination of how

50. See, e.g., *Kowalski v. Gratopp*, 177 Mich. App. 448, 450, 682 N.W.2d 682, 683 (1989).

51. *Moreno v. Marrs*, 102 N.M. 373, 377, 695 P.2d 1322, 1326 (Ct. App. 1984) (fireman sued the Marrs Mudd Company after exposure to para-formaldehyde fumes while evacuating children from a school adjacent to the scene of a chemical leak).

52. *Buchanan v. Prickett & Son, Inc.*, 203 Neb. 684, 690, 279 N.W.2d 855, 859 (1979) (emphasis supplied).

53. *Kocan v. Garino*, 107 Cal. App. 3d 291, 293, 165 Cal. Rptr. 712, 713 (1980) (citing *Walters v. Sloan*, 20 Cal. 3d 199, 571 P.2d 609, 142 Cal. Rptr. 152 (1977)).

widely the fireman's rule might be applied to EMT's if courts permitted some extension of the rule to EMS personnel. EMT's expect to encounter all manner of hazards as they provide emergency medical attention to trauma patients. Yet, many of the hazards to which they are exposed while rendering emergency medical care are not necessarily hazards which they have a duty to face.⁵⁴ The common law insists only that the duty of the EMT is to act reasonably under the circumstances, and there are no statutory duties, express or implied, compelling an EMT to risk his life in the line of duty.⁵⁵ Thus, if the rule required the existence of a duty to confront a specific hazard, the possible applications of an extended fireman's rule would be very limited indeed.

Most courts appear to accept the second formulation, finding primary assumption of risk where the plaintiff "voluntarily enters into some relation with the defendant, [appreciating certain risks,] with [the] knowledge that the defendant will not protect him against one or more [of these] future risks that may arise from the relation."⁵⁶ In other words, primary assumption of the risk will bar the recovery of an EMS member where he knows he might encounter a particular hazard in the course of the job, even if he has no *per se* duty to confront this hazard in the fulfillment of his official duties.

*Maltman v. Sauer*⁵⁷ illustrates this result. In that case, the estate of a helicopter rescue crew member killed in a crash attempted to recover under the rescue doctrine.⁵⁸ The plaintiff was barred from recovery because the hazard which caused him harm was "inherently within the ambit of those dangers unique to and generally associated with this particular rescue opera-

54. Frew, *Must EMT's Risk Their Lives?*, 5 EMT J. 208, 209 (1981) ("The EMT-P's [(paramedic's)] duty is to act reasonably under the circumstances."); see also S. FREW, STREET LAW 180-91 (1983).

55. See, e.g., FLA. STAT. ANN. § 401.23(8) (West 1975). See generally Gargan, *Trench Rescue*, 12 J. EMERGENCY MED. SERVICES, Nov. 1987, at 29. Jim Gargan, the training class coordinator for Rescue Training Associates, Ltd., states that the first priority in any rescue situation for an EMT is the rescuer himself. *Id.* The victim is the last priority, and somewhere in between fall the duties owed to fellow workers, the EMS organization, and taxpayers in the community. *Id.*; see also GRANT, *supra* note 3 (while addressing all aspects of EMT training as defined by the United States Department of Transportation, Grant repeats catechistically the notion that an EMT must only do what he is trained to do). Training standards carefully described by state statute invariably insist only upon EMT training in a variety of basic life-support techniques and never specify training in the management of specific hazards. See *infra* note 107. It is obvious, however, upon an examination of the EMT training manual, that EMT's regularly face a wide variety of hazards equally as dangerous as those faced by firefighters. See GRANT, *supra* note 3, at 417, 499, 559, 562, 573 (detailing responses to fire hazards, electrical hazards, vehicle fire hazards, vehicle and building entry hazards, and hazardous chemical spills).

56. See PROSSER, *supra* note 24, at 481.

57. 84 Wash. 2d 975, 530 P.2d 254 (1975).

58. *Id.* at 976, 530 P.2d at 255.

tion.”⁵⁹ Significantly, regardless of the extent to which the decedent was trained or paid to confront these known hazards, the court focused on the foreseeability of the dangers, stating that “these hazards are not hidden, unknown, and extra hazardous dangers which would not be reasonably anticipated or foreseen by [the] decedent professional rescuer[].”⁶⁰ The *Maltman* focus is not on the type of dangers one is hired and trained to combat, but instead centers on the degree to which a plaintiff is aware that employment means exposure to certain hazards.

In California, this interpretation of the fireman’s rule, requiring foreseeability and consent but not a duty to confront, is even more pronounced. California common law requires that firemen and EMS personnel knowingly and voluntarily agree to *confront* a hazard before they may be said to have primarily assumed the risk.⁶¹ Two recent cases, however, clarify the meaning of the “confront a hazard” language. While both cases involve non-public servants, classification as a public servant (e.g., a fireman) or a non-public servant has never been said to affect the determination of primary assumption of risk. The first is *Von Beltz v. Stunt Man, Inc.*⁶² In that case, stuntwoman Von Beltz, who was paralyzed while filming a car chase for the movie *Cannonball Run*, sought recovery for negligent stunt design.⁶³ The court held that “firemen, policemen, and *other professionals*, such as veterinarians, who engage in hazardous activities in the normal course of their duties, have assumed the risk of known dangers and are thereby barred from recovering for injury.”⁶⁴ This language emphasizes that assumption of the risk, and hence application of the fireman’s rule, depends not on a duty to confront the offending hazard, but rather on the plaintiff’s knowledge of hazards that he may encounter incident to his employment.

The reference to veterinarians in *Von Beltz* is to *Nelson v. Hall*,⁶⁵ the second case clarifying the “confront a hazard” language. In *Nelson*, a veterinarian’s assistant was bitten by a dog being treated in the course of her duties.⁶⁶ Because dog bites are an occupational hazard, and because the plaintiff was aware of, and voluntarily encountered, this hazard, she was said

59. *Id.* at 979, 530 P.2d at 258.

60. *Id.* (footnote omitted).

61. *Walters v. Sloan*, 20 Cal. 3d 199, 204, 571 P.2d 609, 612, 142 Cal. Rptr. 152, 155 (1977) (police officer sued homeowners for negligently providing alcohol to a minor who subsequently injured the officer when officer tried to apprehend youth for public drunkenness).

62. 207 Cal. App. 3d 1467, 255 Cal. Rptr. 755 (1989).

63. *Id.* at 1469-70, 255 Cal. Rptr. at 758.

64. *Id.* at 1478, 255 Cal. Rptr. at 761 (emphasis supplied).

65. 165 Cal. App. 3d 709, 211 Cal. Rptr. 668 (1985).

66. *Id.* at 711, 211 Cal. Rptr. at 670.

to have assumed the risk in a primary sense.⁶⁷ The position of a veterinarian in relation to the particular hazards involved in the treatment of animals largely parallels that of EMS personnel in performance of their sometimes hazardous duties. A veterinarian has neither a duty to protect the public from dog bites per se nor a duty to confront a ferocious dog; rather, a veterinarian treats injured animals. The risk of being bitten is only incidental to the duty of the veterinarian. In the same manner, the risks faced by EMS personnel are also incidental to their primary duty, which is the treatment of sick and injured people. Even with no duty to protect the public from the particular injuries an EMT might suffer on the job, an EMT still assumes the risk of such injuries because he knows, when he becomes an EMT, that risk of injury is incidental to the duties performed.

The assumption of risk case which best addresses the factual peculiarities of the EMS situation is *Carter v. Taylor Diving and Salvage Co.*⁶⁸ This case illustrates the manner in which the primary assumption of risk doctrine may bar recovery by EMS personnel. In *Carter*, a physician was hired to perform emergency surgery in a decompression chamber under the surface of the ocean. When the physician sustained a heart attack as a result of the particular stresses related to this surgery, he sued, claiming that the negligence occasioning the need for his services was negligence for which he, himself, could recover.⁶⁹ The court, in denying recovery as a matter of law,⁷⁰ held that Carter's

health was well known to him when he accepted employment He knew or should have known . . . that the travel to and from offshore assignments, the long hours involved, and the tension inevitable in the circumstances would put a strain on his weak heart. This indicates that, in the literal sense, Dr. Carter knew, and assumed, the risk of what happened to him in the course of his professional efforts.⁷¹

Carter lacks the complexity of other fireman's (professional rescuer's) rule cases in that Carter was not injured by a hazard he was duty-bound to confront on behalf of society. There is, therefore, no question that the particular role of firemen and policemen in society plays no part in the application of the fireman's rule to him. Carter's suit is barred because, regardless of his status as a non-public servant, Carter was aware of the potential hazards of

67. *Id.* at 715, 211 Cal. Rptr. at 673.

68. 341 F. Supp. 628 (E.D. La. 1972), *aff'd*, 470 F.2d 995 (5th Cir. 1973).

69. *Id.* at 629-31.

70. *Id.* at 632.

71. *Id.* at 631 (footnote omitted).

the job and voluntarily entered a relationship in which he risked exposure to these hazards.

The above case law indicates that an EMS member may be said to have assumed the risk of certain hazards even where the confrontation of these hazards, for which EMS personnel are not specifically trained, hired, or paid, may be beyond the scope of the duty of the EMS member. An examination of the EMT training manual makes it perfectly clear that the prescribed duties of an EMT are not necessarily the full measure of his service to the public and that danger on the job is commonplace.⁷² Although EMS personnel are not hired, trained, and paid to confront and protect the public from danger, this should not prevent extension of a fireman's rule based upon primary assumption of the risk to EMS personnel.

3. *The Volunteer Army: Relationship Confirmed by the Doctrine of Abandonment*

Today, the overwhelming majority of firemen and EMS personnel are volunteers.⁷³ Courts must consider separately whether a fireman's rule based upon primary assumption of risk may be applied to these volunteers. It is clear that an EMT may assume the risk in the secondary sense, that is, have knowledge of a particular, dangerous situation and voluntarily expose himself to that hazard. But to what extent does an EMT agree to primarily assume the risk of all ordinary hazards arising out of his occupation? The preceding section of this Comment answers this question generally, concluding that no duty to confront particular hazards need exist before one may be said to have primarily assumed the risk;⁷⁴ in order to primarily assume the risk, a plaintiff EMT need only appreciate the risk and participate in a voluntary relationship with the potential tortfeasor that encompasses exposure to these risks. Ordinarily, the employment contract and the receipt of salary and benefits by the EMT, in exchange for his services, attest to this acceptance where paid, non-volunteer EMT's are concerned.

If, however, the fireman's rule based upon assumption of risk is to be extended to volunteer EMT's, for whom there is no contract, no salary, and severely limited benefits, primary assumption of risk must be expressed through other indicators. While the standardized training of EMS personnel ensures appreciation of the normal risks involved in EMS work, it is not as easy to establish the voluntary relationship with the potential tortfeasor nec-

72. See generally GRANT, *supra* note 3 (EMT's frequently take additional measures, necessary under the circumstances, to move the victim and increase survival odds).

73. Carey, *supra* note 3 (90% of all firemen and between two-thirds and three-quarters of all EMS personnel are currently volunteers).

74. See *supra* notes 50-72 and accompanying text.

essary to establish primary assumption of risk. The common law of abandonment creates a duty, on the part of volunteer EMS personnel, to the public, from which the requisite relationship with the potential tortfeasor may be deduced. Principles of abandonment establish the common law duty of one who previously has had no duty but undertakes assistance to another.⁷⁵ Such a person breaches a duty to a rescuee if, after undertaking assistance, he then abandons his charge where such abandonment might leave the other in a worse position than before.⁷⁶ Courts have rationalized the extension of the fireman's rule to volunteers by stating that volunteers, "although uncompensated, *undertake* [by joining a firefighting organization] the same duties as paid firemen."⁷⁷ Since it is "beyond peradventure that the maintenance of organized society requires the presence and protection of fire fighters and police officers,"⁷⁸ and since society's members are in some sense helpless to protect themselves against danger of fires and crime, volunteer firemen who undertake the duty to protect life and property, but abandon society in its time of need, do leave society in a worsened position and thus have an affirmative duty to the public. By purporting to be committed members of firefighting organizations, firefighters, who might, for example, refuse to confront a fire, have concealed the need for committed firefighters and have prevented their organizations from replacing them with diligent defenders.

In the same manner, the abandonment principle creates a duty of volunteer EMS personnel to the public. The existence of this duty demonstrates a voluntary relationship between an EMT and potential tortfeasoring members

75. Several state legislatures have statutorily described the EMT's duty to assist. Vermont has enacted legislation creating a duty to assist for individuals of a certain level of training whenever they encounter emergency situations and can do so safely. VT. STAT. ANN. tit. 12, § 519 (1973 & Supp. 1990); cf. MINN. STAT. ANN. § 604.05(1) (West 1988) ("Any person at the scene of an emergency who knows that another person is exposed to or has suffered grave physical harm shall, to the extent that the person can do so without danger or peril to self or others, give reasonable assistance to the exposed person.").

76. One who, being under no duty to do so, takes charge of another who is helpless adequately to aid or protect himself is subject to liability to the other for any bodily harm caused to him by . . . (b) the actor's discontinuing his aid or protection, if by so doing he leaves the other in a worse position than when the actor took charge of him.

RESTATEMENT, *supra* note 27, at § 324.

77. *Buchanan v. Prickett & Son, Inc.* 203 Neb. 684, 692, 279 N.W.2d 855, 860 (1979) (emphasis supplied). The *Buchanan* court also noted that the fire department itself performs the public duty and that this duty is one that firemen assume by membership in the organization. *Id.* at 691, 279 N.W.2d at 859. Prosser verifies widespread application of the fireman's rule to volunteers where the rule is grounded in assumption of risk. See PROSSER, *supra* note 24, at 431 n.43.

78. *Kreski v. Modern Wholesale Elec. Supply Co.*, 429 Mich. 347, 366, 415 N.W.2d 178, 186 (1987).

of the public. The comprehensive training of EMS personnel evidences their awareness of the risks which they may encounter on the job. The existence of both the voluntary relationship and the awareness of risk establishes primary assumption of risk on the part of volunteer EMS personnel. Thus, volunteer EMS should be subject to a fireman's rule based on assumption of the risk.

Note that the duty owed by volunteer EMS personnel to the public is not, itself, part of the assumption of risk analysis leading to application of the fireman's rule, but merely can be used to establish the necessary relationship between plaintiff and defendant where primary assumption of the risk is asserted as a defense. Even if volunteer EMT's and their paramedic counterparts had no duty to the public, this deficiency would not preclude application of the fireman's rule if the requisite relationship could otherwise be established; under an assumption of the risk analysis, volunteers should be treated no differently than their paid counterparts.⁷⁹

4. *Should the Rule Excuse the Duty of the Public?*

There is one last question to be resolved before a fireman's rule based upon primary assumption of the risk might be applied to EMS personnel: Whether, absent express contract language, the duty of the public to EMS personnel is excused when EMS personnel agree, as between themselves and their employer, to assume the risks of hazards incident to their employment? At least one court has distinguished cases in which the municipal employer was negligent from those cases in which the negligent defendant was a private individual utilizing emergency services: "[Because w]e determined that the doctrine of assumption of risk . . . [is limited to cases] where a master/servant relationship is involved . . . [w]e do not believe that the assumption of the risk can be carried to that extent."⁸⁰ It should be noted that this concern is not widespread and, indeed, Professor Prosser indicates that assumption of the risk is a common basis upon which to adopt the fireman's rule for firemen in American jurisdictions.⁸¹ Because the fireman's rule pro-

79. *Buchanan*, 203 Neb. at 692-93, 279 N.W.2d at 861; *Moreno v. Marrs*, 102 N.M. 373, 377, 695 P.2d 1322, 1326 (Ct. App. 1984).

80. *Calvert v. Garvey Elevators, Inc.*, 236 Kan. 570, 574-75, 694 P.2d 433, 437, 438 (1985). Perhaps more importantly, in *Kreski*, 151 Mich. App. at 386, 390 N.W.2d at 254, the seminal Michigan case preceding *Kowalski*, the court refused to apply an assumption of risk rationale. The *Kreski* court analogized the situation of a firefighter to that of a punch-press operator; the latter arguably assumes the risk of losing a hand while working the press, but may nonetheless recover tort damages against a third-party tortfeasor. *Id.* at 386, 390 N.W.2d at 249. The court found inconsistency in the proposition that firemen might be barred recovery from third-parties. *Id.*

81. See PROSSER, *supra* note 24, at 430-31 & nn.40-45. "[C]ircumstances that for policy

protects those whose negligence occasions the summoning of emergency services, at least impliedly, the duty of third parties to emergency services personnel is excused by the assumption of risk doctrine.

One possible explanation for the willingness of courts to excuse the duty of the public under the fireman's rule is the oft-noted, special relationship of policemen and firemen to the public.⁸² This relationship has historical origins which may anachronistically constrict application of the fireman's rule. Policemen, for example, were not traditionally viewed as employees of the municipality but as extensions of the state, in its most collective sense, with a duty to protect the public.⁸³ There is a certain unity of view in these cases, decided as they were in a time when the number of essential public services was small. Duties of a public nature, namely the protection of life and property, were considered public services which could not be arranged by contract between the officer and the municipality.⁸⁴ In fulfilling these duties to protect life and property, officers acted as public servants of the state. While at the time, courts believed that "this rule [could not] be seriously questioned,"⁸⁵ the rule is not currently recognized; policemen and firemen do

reasons are deemed to negate the existence of the usual duty to exercise reasonable care remain a viable and complete defense There can be no question but that [this is so]." *Baker v. Superior Court*, 129 Cal. App. 3d 710, 719-20, 181 Cal. Rptr. 311, 317 (1982). This statement is merely a formulation of primary "assumption of risk—a negation of the duty to exercise reasonable care on the part of the person responsible for the fire." *Id.*

82. See *Kreski*, 151 Mich. App. at 366, 415 N.W.2d at 187 (quoting *Flowers v. Rock Creek Terrace*, 308 Md. 442, 447, 520 A.2d 361, 367 (1987)).

83. A policeman . . . is an arm of the law; he holds an office as a trust from the state; he is a preserver of the public peace; he is not the hired servant of a master; no contract relation exists between him and the city by which he is bound to its service; he can lay down his trust at any time according to his pleasure without exposing himself to an action for damages for breach of contract.

Farrell v. City of Bridgeport, 45 Conn. 191, 195 (1877).

The police officers of a city are not regarded as the servants or agents of the city; their duties are of a public nature; their appointment is made by the city as a convenient mode of exercising a function of government; their duties are to preserve the good order and provide for the safety of the people of the city, and in these duties they act as the public servants of the state under the law, and not as mere agents of the city. Hence the relation of principal and agent cannot exist between the city and the police force

Peters v. City of Lindsborg, 40 Kan. 654, 656, 20 P. 490, 491 (1889).

The municipal corporation, in these and the like cases represents the state or the public; the police officers are not servants of the corporation, and hence the principal of respondeat superior does not apply The cases rest on the ground that . . . while engaged in duties related to the public safety, . . . [police officers] are the servants of the Commonwealth.

Taylor v. City of Owensboro, 98 Ky. 271, 278, 32 S.W. 948, 950 (1895).

84. See *Peters*, 40 Kan. at 656, 20 P. at 491.

85. *Id.* (footnotes omitted).

have a relationship to the municipalities for which they work.

Furthermore, there are now a wide variety of services which are considered essential in today's society. While it is truly "beyond peradventure that the maintenance of organized society requires the presence and protection of fire fighters and police officers,"⁸⁶ EMS personnel should be viewed no differently; EMS personnel are every bit as dedicated to the protection and preservation of life, though the battles they wage are frequently against conditions within the human body and not against external, easily identifiable threats. The passage of the Florida Emergency Medical Services Grant Act of 1973, for example, indicates the essential nature of emergency medical services to the preservation of life.⁸⁷ In ascertaining whether the fireman's rule should be extended to EMT's, our modern society should not distinguish between members of EMS and firemen on the basis of now inappropriate historical distinctions whose origins in a different historical context are almost forgotten.⁸⁸

B. Extension in Jurisdictions Grounding the Rule in Premises Liability

Before considering whether modern public policy for the fireman's rule supports an extension of the rule to EMS personnel, it is useful to examine policy based upon traditional premises liability and to examine the general outlook of this policy on the duty owed to EMS personnel. Firemen and policemen have traditionally been considered licensees because a landowner cannot reasonably be expected to prepare for the visit of a fireman or a policeman—such a person may enter at will in performance of his public duty and is likely to enter at unforeseen times and upon unusual parts of the property.⁸⁹

A landowner is no more able to prepare for the visit of an EMT than he is able to prepare for a fireman or a policeman. By virtue of the state police power, a fireman or policeman may enter onto land, before a landowner can make it safe, in order to protect the public.⁹⁰ EMS personnel do not have this power but may, however, enter without the consent of the landowner

86. *Kreski v. Modern Wholesale Elec. Supply*, 429 Mich. 347, 366, 415 N.W.2d 178, 186 (1987).

87. FLA. STAT. ANN. § 401.104 (West 1986).

88. Actually, a "high quality emergency service has become an expected government function, the 'third public force' after fire and police protection." *Glastris, supra* note 3, at 19.

89. See PROSSER, *supra* note 24, at § 61.

90. While a fireman, as a private individual, may enter in order to avert public calamity or disaster, see *HARPER, supra* note 27, at § 1.16; *American Print Works v. Lawrence*, 23 N.J.L. 590, 599-602 (1851), he will ordinarily enter under authority of law—"under governmental authority to serve a public purpose." *Flowers v. Sting Sec., Inc.*, 62 Md. App. 116, 126, 488 A.2d 523, 528, *aff'd*, 308 Md. 432, 520 A.2d 361 (1987).

under the common law doctrine of private necessity.⁹¹ Additionally, EMS personnel may enter without consent when charged with a certain duty and given authority by statute for the performance of acts necessitating entry onto private premises.⁹² "In all such cases the duty or authority carries with it a privilege to enter private land"⁹³ In practice, EMS personnel frequently enter land with the specific authorization of a policeman or fireman who requires the presence of EMS personnel in order to fulfill that public safety officer's duty to protect life and property.⁹⁴ Furthermore, regarding the unfairness of insisting that landowners keep their premises safe for the largely unpredictable appearances of firemen and policemen, EMT's, because of their role in the EMS system, are equally likely to appear at unlikely times and in unlikely places; in many cases, the landowner will not be present either to forbid access or to make the land safe. Finally, whereas a fireman may be somewhat like a business invitee in that prevention of damage conveys pecuniary, business-related benefits to the landowner,⁹⁵ no such benefits are conveyed by EMS personnel. Thus, EMT's should be considered licensees to the same extent as firemen, and jurisdictions grounding the fireman's rule in traditional premises liability rule should extend the rule to EMS personnel.⁹⁶

91. HARPER, *supra* note 27, at § 1.22 (privilege to intrude where intrusion is necessary, or reasonably appears to be necessary, to save life or property of greater value than the harm caused by the intrusion); see also Bohlen, *Incomplete Privilege to Inflict Intentional Invasions of Interests of Property and Personalty*, 39 HARV. L. REV. 307, 314 (1926) ("An act intended to invade another's legally protected interests is privileged only if done to protect or advance some public interest or an interest of the actor.").

92. HARPER, *supra* note 27, at § 1.20.

93. *Id.*

94. Telephone interview with Teresa Jenkins, Counsel for District of Columbia Fire Department (Oct. 1989). While in *People v. Olsen*, 186 Cal. App. 3d 257, 230 Cal. Rptr. 598 (1986), private paramedics did not come within the definition of either "emergency rescue personnel" or "public officer" in the penal statute prohibiting interference with the lawful efforts of such individuals, and thus had no police power, *id.* at 263, 230 Cal. Rptr. at 601, most EMT's are also firemen and under this statute would be granted police power over civilians while in performance of their official duties. Where EMT's have some form of police power, a landowner frequently will not be able to predict the appearance of EMT's on his property. Moreover, like firemen and policemen, EMT's exercise this power in unlikely times and places. It is therefore inconsistent to afford EMT's the higher protection afforded invitees while categorizing firemen and policemen as licensees only.

95. See *supra* note 27.

96. *Brady v. Consolidated Rail Corp.*, 35 Ohio St. 3d 161, 519 N.E.2d 387 (1988), creates a logical exemption to a fireman's rule based in premises liability, an exemption which should apply with equal force to a fireman's rule extended to EMS personnel. This case holds that "where a policeman enters into an area . . . held open for the use of the general public, where it is reasonable for the landowner to expect police presence and prepare for it, the police officer stands in the same position as others being an invitee." *Id.* at 163, 519 N.E.2d at 389.

*C. Extension in Jurisdictions Grounding the Rule
in Public Policy Rationales*

Lastly, the question of whether the fireman's rule should be applied to EMS personnel must be considered in light of public policy concerns that have led to the adoption of the fireman's rule in many states. Public policy provides important rationales for the fireman's rule.⁹⁷ Because, however, courts are only now beginning to consider the extension of the fireman's rule to EMS personnel, they have yet to articulate policies, supporting the extension of the rule, similar to those supporting the existence of the rule generally.⁹⁸ If, however, a goal is the continued existence and development of EMS systems, extension of the rule to EMS personnel would be offensive to this policy only if it negatively impacted the growth of the necessary and essential services provided by EMS personnel.⁹⁹ At this time, there is no empirical authority for the proposition that the adoption of the fireman's rule would have a detrimental impact on the growth of the EMS profession.

Although courts have yet to consider policy rationales favoring extension of the fireman's rule to EMS personnel, the policy concerns that support the rule generally also support its extension to EMS personnel. At least one court has stated that "[f]irefighters are present . . . not because of any private duty owed the occupant, but because of the duty owed to the public as a whole."¹⁰⁰ In this regard, EMS personnel are no different from firemen. They owe no private duty to any person, but operate to save lives because of a public duty to assist individuals requiring emergency and sometimes non-emergency medical attention.

Secondly, courts have indicated that the stated purpose of the fireman's and policeman's profession is to protect the public. This "'distinguishes safety officers from other employees.'"¹⁰¹ The job of the EMT and others in the EMS system is also to protect the public, albeit from the future medical consequences of events often caused by the negligence of individuals. Moreover, while safety officers confront dangers hazardous to their health as the object of their duty and EMS personnel only largely confront dangers in a peripheral fashion, it may be argued that this is not grounds to prevent extension of the rule to EMT's. When the EMT or his paramedic counterpart

97. See *Calvert v. Garvey Elevators, Inc.*, 236 Kan. 570, 576, 694 P.2d 433, 438 (1985).

98. See *supra* notes 32-36 and accompanying text.

99. See, e.g., FLA. STAT. ANN. § 401.104 (West 1988).

100. *Kowalski v. Gratopp*, 177 Mich. App. 448, 450, 442 N.W.2d 682, 683 (1989) (quoting *Kreski v. Modern Wholesale Elec. Supply Co.*, 429 Mich. 347, 366, 415 N.W.2d 178, 186-187 (1987)).

101. *Id.* at 451, 442 N.W.2d at 683-84 (quoting *Kreski*, 429 Mich. at 367, 415 N.W.2d at 187).

becomes a member of EMS, he or she assumes the risk of dangers incidental to the provision of emergency medical services in the same way that firemen may be said to assume the risk of dangers which are directly the subject of their duty.¹⁰² As a further consideration, fairness dictates that firemen have licensee status because landowners cannot predict the appearance of firemen. Owners and occupiers can predict the visits of EMS personnel with no more success than they can predict the visits of other safety officers. EMS personnel cannot be separated from firemen and policemen on the basis of the nature of their respective jobs; although they can be separated by lack of a static duty to risk their lives, examination of the multiple bases for the fireman's rule indicates that the existence of this duty has never been relevant to the adoption of the fireman's rule.

Another public policy rationale basic to the fireman's rule has been "the spreading to the public of the costs of employing safety officers and of compensating them for any injuries they may sustain in the course of their employment."¹⁰³ Like the cost of injuries to firemen, the costs of injuries to EMT's may be spread onto the public. Injuries suffered by EMS personnel could be made compensable by existing worker's compensation plans. In some respects, legislatures have already done this. Florida, for example, has granted both firemen and EMS personnel worker's compensation for up to 100% of the salary lost while injured, and the right to benefit from municipality-funded group health insurance policies.¹⁰⁴ As a whole, legislatures have not, however, implemented compensation packages for EMS personnel as comprehensive as those provided for firemen.¹⁰⁵ Certainly, this reflects the need to educate not only the courts but also the legislatures as to the existence of the significant hazards that EMS personnel confront.

III. THE COURTS CONSIDER A FIREMAN'S RULE APPLIED TO EMT'S

Kowalski v. Gratopp,¹⁰⁶ decided in June 1989, is the first decision to con-

102. See *supra* notes 50-72 and accompanying text.

103. *Kowalski*, 177 Mich. App. at 450, 442 N.W.2d at 683.

104. FLA. STAT. ANN. § 112.08 (West 1982 & Supp. 1990).

105. See, e.g., FLA. STAT. ANN. §§ 112.18, .19, .191, 121.0515 (West 1982). The Florida legislature has given firemen additional compensation in the form of accidental death benefits, FLA. STAT. ANN. § 112.191 (West 1982), special disability benefits, FLA. STAT. ANN. § 112.18, .19 (West 1988), and more retirement pension credit per year than other public employees because of the arduous nature of the job. FLA. STAT. ANN. § 121.0515(1) (West 1982).

Benefit protection to volunteer emergency services personnel tends to be even less than that of their paid counterparts, although volunteers are usually covered by workmen's compensation plans. See *Buchanan v. Prickett & Son, Inc.*, 203 Neb. 684, 692, 279 N.W.2d 855, 860 (1979).

106. 117 Mich. App. 448, 442 N.W.2d 682 (1989).

sider the application of the fireman's rule to paramedics acting in their capacity as EMS personnel.¹⁰⁷ Prior to this decision, all EMS personnel, who were also firemen and were attempting to recover for injuries occasioned by the negligence necessitating their presence, were barred from such recovery by their membership in a fire service.¹⁰⁸ In *Kowalski*, the plaintiff paramedic worked for Community Emergency Medical Services. Plaintiff's employer operated under a contract with the City of Pontiac for ambulance service.¹⁰⁹ Responding to a call from the fire department to pick up a nonemergency patient who was suffering abdominal pain, Kowalski arrived at the scene, slipped on an icy walkway, and tore a tendon in his right bicep. He later filed suit alleging negligent maintenance of the premises.¹¹⁰ Defendant moved for summary judgment under the fireman's rule.¹¹¹

The court refused to apply the fireman's rule to Kowalski, holding that the fireman's rule by its very nature is limited to public employees.¹¹² Public

107. Because of the increasing sophistication of emergency medical care, many states have distinguished categories of EMS personnel according to skill level. For example, the Florida legislature has defined two classes of EMS personnel—EMT's and paramedics: "'Emergency medical technician' or 'EMT' means any person who is trained in basic life support and who is certified by the department to perform such procedures in emergency situations." FLA. STAT. ANN. § 401.23(12) (West 1986 & Supp. 1990). "'Basic life support' means treatment of medical emergencies by a qualified person through the use of techniques such as patient assessment, cardiopulmonary resuscitation (CPR), splinting, obstetrical assistance, bandaging, administration of oxygen, application of medical anti-shock trousers, and other techniques" *Id.* at § 401.23(8). "'Paramedic' means a person who is certified by the department to perform basic and advanced life support, pursuant to the provisions of this act." *Id.* at § 401.23(18). "'Advanced life support' means treatment of life-threatening medical emergencies through the use of techniques such as endotracheal intubation, the administration of drugs or intravenous fluids, telemetry, cardiac monitoring, and cardiac defibrillation by a qualified person, pursuant to rules of the department." *Id.* at § 401.23(1).

108. *See, e.g., Calvert v. Garvey Elevators, Inc.*, 236 Kan. 570, 694 P.2d 433 (1985). Calvert was a captain with the Great Bend Fire Department and was responsible for both firefighting and rescue work. He was dispatched to the scene of an anhydrous ammonia leak. On this run, he was in charge of the ambulance and was thus called upon to make use of his training as a licensed EMT. Having retrieved a downed man from the vapor area, Calvert was exposed to the ammonia cloud and was injured. The court held that a firefighter (the court did not consider Calvert as an EMT) could not recover for injuries caused by the very wrong that required his presence in an official capacity and subjected the firefighter to harm. *Id.* at 570, 694 P.2d at 435-36, 438.

109. *Kowalski v. Grattopp*, 177 Mich. App. 448, 449, 442 N.W.2d 682, 683 (1989).

110. *Id.*

111. *Id.*

112. *Id.* The court reasoned that, in this situation, the plaintiff had not been acting as a public employee. The Community Emergency Medical Services (Community), the plaintiff's employer, was a private company under contract with the city for emergency medical services. This service was limited in scope. The pleadings indicate that Community billed the patient directly for nonemergency calls as opposed to billing the city. According to the plaintiff, the particular call on which he was injured was not an emergency. The court of appeals held the evidence of plaintiff's private employment sufficient to reverse the lower court's grant of the

employees, stated the court, are the ones paid and trained by public funds;¹¹³ the fireman's rule prevents this group of people from being doubly compensated by members of the public through private litigation. In dicta, the court stated that had the plaintiff been viewed as a public employee, the fireman's rule still would not apply insofar as the Michigan Supreme Court did not contemplate the extension of the fireman's rule beyond firefighters and police.¹¹⁴ The court reasoned that "[s]afety officers are employed, specially trained, and paid to confront dangerous situations for the protection of society. They enter their professions with the certain knowledge that their personal safety is at risk while on duty."¹¹⁵

Given the public policy rationale behind the Michigan fireman's rule, the *Kowalski* holding appears unassailable: the Michigan fireman's rule is limited to public employees on the grounds that firemen protect the public and should be compensated, collectively, by the same;¹¹⁶ *Kowalski* was not acting as a public employee when he was injured.¹¹⁷

It is the dicta of the *Kowalski* court, however, that may be misguided and which certainly focuses on that area of law most in need of development. Given the foregoing analysis, it appears that the fireman's rule should be applied to EMS personnel who are public employees. The greatest hurdle to this application, and the greatest dissimilarity between firemen and EMS personnel, appears to be that firemen are paid to confront dangers inherent in firefighting, such as smoke and flames,¹¹⁸ while EMT's confront these dangers only incidentally to the performance of their duties. Two factors nullify the importance of this difference. First, there are a host of hazards which are no more likely to be encountered by firemen than by EMS personnel. In one case, for example, a plaintiff firefighter arrived at the scene to

defendant's motion for summary judgment, where the court of appeals interpreted the fireman's rule as only limiting recovery of public employees. *Id.* at 450-51, 442 N.W.2d at 683.

113. *Id.*

114. *Id.* at 451, 442 N.W.2d at 683.

115. *Id.* at 451, 442 N.W.2d at 684 (quoting *Kreski v. Modern Wholesale Elec. Supply Co.*, 429 Mich. 347, 371-72, 415 N.W.2d 178, 189 (1987)).

116. *Id.* at 450, 442 N.W.2d at 683.

117. *Id.* The record before the court of appeals reflected the fact that *Kowalski* was injured while on a nonemergency call. *Id.* Although some state statutes indicate that EMS is to be funded to assist both medical emergencies and non-emergencies, such is not the case with the Michigan EMS enabling statute. MICH. COMP. LAWS §§ 333.3203, .20703(1), (4), .20760 (1980 & Supp. 1990). Plaintiff's bifurcated billing policy—billing the municipality for emergency calls and the plaintiff in nonemergency situations, *Kowalski v. Gratto*, 177 Mich. App. 448, 450, 442 N.W.2d 682, 683 (1989)—reflects the fiscal demarcation between public and nonpublic duties. In servicing a non-emergency call, the plaintiff paramedic was not acting in his capacity as a public employee.

118. See *Lipson v. Superior Court*, 31 Cal. 3d 362, 371, 644 P.2d 822, 828, 182 Cal. Rptr. 629, 634-35 (1982).

assist the defendant who had fallen from her walker inside the house and required emergency medical attention. When the firefighter determined that materials were needed from the ambulance, he exited the house and slipped on ice.¹¹⁹ The judge determined that weather was one of the inherent risks of a firefighter's calling.¹²⁰ He then applied the fireman's rule despite the fact that ice is clearly not a danger from which firemen are hired to protect the public. Weather and hazardous conditions in the terrain are, equally, risks inherent in the calling of EMT's and their paramedic counterparts. Even if "firemanly" hazards such as smoke and falling buildings are to be viewed as outside the scope of an EMT's employment, this should not preclude application of the fireman's rule to all hazards encountered by EMS personnel.

Secondly, there exist hazards unique to EMS which compel extension of the fireman's rule because they are incidental to the profession. Consider the hypothetical in which an EMT responds to a call where the victim has been exposed to a laboratory virus negligently released into the work place and during which the EMT is, himself, exposed to the virus. All of the rationales for the adoption of the fireman's rule are available in this instance. An EMT arguably assumes the risk that, upon employment, he will be exposed to a variety of diseases in the course of his employment. Further, if he is a public employee, his salary and workman's compensation will be funded in part by the very taxpayer whose negligence occasioned the presence of EMS. And finally, under the common law doctrine of private necessity, the EMT may enter the laboratory without the consent of the owner or occupier of the laboratory and thus the owner may not bar the EMT while the premises are made safe.

In order to protect the individual victim and society in general from the future consequences of the disease, it is absolutely necessary for the EMT to confront the victim and hence the virus. There is no salient dissimilarity between this situation and that of a fireman fighting a fire.¹²¹ The question that should now concern the courts is not whether the fireman's rule should be blanketly applied to EMS personnel, but whether, in a specific factual

119. *Maryland Casualty Co. v. Heiot*, 224 N.J. Super. 441, 443, 540 A.2d 920, 921 (Law Div. 1988).

120. *Id.* at 444-45, 450 A.2d at 922.

121. Where a reasonable EMT would not expose himself to the virus, the particular EMT has no duty to do so. *See supra* notes 54-55 and accompanying text. His discretionary ability to avoid exposure is irrelevant to the question of whether the fireman's rule should be extended to EMS personnel: if he does not confront the virus, he will simply not be harmed and, without injury, will file no suit; if he does confront the virus, he does so having assumed a public duty to provide emergency medical care where reasonable—the fireman's rule merely assures that the public, not a private individual, will compensate him for his injury.

situation, the hazard confronted is within the scope of the plaintiff's employment.

A second EMS case, *Siligato v. Hiles*,¹²² considered application of the fireman's rule to EMS personnel. Recognizing that the risk of injury is inherent in the work performed by EMS personnel, the court in *Siligato* held that "the application of the 'fireman's rule' is extended to volunteer emergency rescue squad workers."¹²³ In *Siligato*, an EMT responded to an emergency call and was forced to witness the death of his own nineteen-month-old baby.¹²⁴ He sued under a theory of negligent infliction of emotional distress.¹²⁵ The court held that the risk of witnessing the death of one's child was a risk assumed by EMS personnel and barred recovery on account of the fireman's rule.¹²⁶ This unlikely result, in the only case to have considered risks inherent in the EMS profession, highlights the need for development in this area of the law. While it appears likely that risks due to weather and dangerous terrain are risks assumed by EMS personnel, the extent to which "firemanly" risks, risk of exposure to the AIDS virus (where for instance the victim negligently fails to inform EMS of his infection), and the risk of other injuries are assumed by EMT's and their paramedic counterparts, has yet to be decided. As the organization of EMS systems and the training of EMS personnel evolve, the line separating hazards inside and outside the scope of the job will change. Given the rapid pace of development in potential EMS capabilities and the relative newness of the field, it is likely that solutions offered by today's courts will not suffice in the future.

CONCLUSION

The fireman's rule is supported by a loosely-woven collection of common law and policy justifications. The use of these rationales to justify application of the fireman's rule to EMS personnel highlights the similarity between EMT's and firemen. EMS personnel, like firemen, are paid to assist in emergency situations which may be, and frequently are, produced by the negligence of others. Further, many risks involved in this public service are clearly delineated at every step of the training process of emergency medical personnel and are therefore inherent in the job. Such risks can be readily compensated by salary considerations and benefits. Because these compensations are paid by the taxpayer, it appears unjust to allow EMS personnel to hold the taxpayer liable for negligence in creating risks that are an identi-

122. 236 N.J. Super. 64, 563 A.2d 1172 (Law Div. 1989).

123. *Id.* at 67, 563 A.2d at 1173.

124. *Id.* at 64, 563 A.2d at 1172.

125. *Id.*

126. *Id.* at 68, 563 A.2d at 1174.

able part of the job of an EMS member. Barring any indication that the application of the fireman's rule to EMS personnel has an adverse effect on the stated policy of promoting the growth of this essential and necessary service, the fireman's rule should apply to EMS personnel.

Ideally, courts will continue to make use of informed commentary on the emergency medical services profession in order to identify accurately those risks which are in fact an inherent part of this profession. Likewise, legislatures should keep abreast of the developments in the field of emergency medical care so that funding for training, equipment, and compensation will continue to reflect the role of EMS in today's society.

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